IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 796 OF 2007
IN
CRIMINAL APPEAL NO. 648 OF 2007

Abdul Rehman Abdul Gafoor Shaikh ..Applicant
(Org.Accd.No.1)

Vs.

The State of Maharashtra ..Respondent

Mr. Shirish Gupte, Senior Counsel with Mr. P.K. Dhakephalkar i/by Ms. Simeen Shaikh for applicant.

Mr. A.S. Gadkari, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 09, 2007.

P.C.:

1. Heard Mr. Gupte the learned Senior Counsel for the applicant and Mr. Gadkari, the learned APP for the State.

2. This is an application for bail by the applicant-original accused no.1. He has been convicted by the Special Court under the M.C.O.C. Act, 1999 for the offences punishable under Section 3(2) of the said Act read with Section 120-B read with Section 34 of IPC as well as under Section 3(1)(ii) of the M.C.O.C. Act, 1999 and has been sentenced to

suffer RI for seven years and to pay a fine of Rs.7 lacs in default therein to suffer further RI for six months. He has also been convicted for the offences punishable under Section 387 read with Section 34 of IPC and sentenced to suffer RI for two years and to pay a fine of Rs.5000/- in default to suffer further RI for three months. All the substantive sentences have been ordered to run concurrently as per the Judgment and Order dated 13/6/2007 passed by the Special Court in MCOC Special Case No. 3 of 2003.

3. It is contended that the applicant-convict was taken in custody for the first time on 5/3/2003 in connection with the very same offences in MCOC Case No.3 of 2003 and he has been continuously in jail for the last more than four years and four months out of the maximum sentence awarded of RI for seven years. The applicant has placed reliance, in support of this application, on the following orders passed by this court:-

(a) Nazim Hasan Shamsh Zoha Rizvi vs. The State of Maharashtra [Criminal Application No. 5181 of 2003 in Criminal Appeal No. 1343 of

2003].

(b) Uday Mohanlal Acharya vs. The State of Maharashtra [Criminal Application No. 4297 of 2005 in Criminal Appeal No. 389 of 2002].

4. It has further been pointed out that the order passed by this court in Uday Mohanlal Acharya's case (Supra) has been confirmed by the Apex Court on 14/11/2005. In Acharya's case the jail period was four years and three months which was 3/4th of the sentence period, whereas in Nazim Hasan's case the jail period was three years which was about half of the highest sentence period awarded by the Special Court.

5. The learned APP has not filed any affidavit in reply opposing this application. The applicant claims to be a permanent resident of Mumbai and the learned counsel for the applicant states that the applicant would abide by all such conditions that may be imposed by this court. It has also been admitted that the fine amount has not been remitted and it is stated

that the applicant's financial conditions do not permit him to deposit the fine amount.

6. Having regards to the fact that out of the highest sentence period of five years, the applicant has already been in jail for four years and four months in respect of the very same case from which the appeal arises, it is directed that the applicant be released on bail, if not required in any other case, in the sum of Rs.1,00,000/- and with one solvent surety for the like amount. In addition, the applicant shall once a week, during the pendency of Criminal Appeal No. 648 of 2007, report to the M.R.A. Marg Police Station, Mumbai, between 3 p.m. to 7 p.m. and he shall not leave Mumbai without obtaining written permission in advance from the Senior Police Inspector of the said police station.

7. Application is disposed off in terms of the above directions.

(B.H. Marlapalle,J.)